

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JOHN T. SESSIONS; HISTORIC FLIGHT
FOUNDATION, a Washington nonprofit
corporation; and FWF LTD., a Washington
corporation,

Plaintiffs,

v.

UMB BANK, N.A., a foreign corporation,

Defendant.

CASE NO. 2:21-cv-01490-LK

ORDER TO SET HEARING
PURSUANT TO RCW 6.25.070

This matter comes before the Court on defendant and counterclaim plaintiff UMB Bank, N.A.'s ("UMB") motion to enforce an order of the District Court in and for Williams County, North Dakota or, alternatively, for a prejudgment writ of attachment against plaintiffs and counterclaim defendants John T. Sessions, Historic Flight Foundation, and FWF, Ltd. ("Counterclaim Defendants") under Washington law. Dkt. No. 16. For reasons that will be set out in a forthcoming order, UMB's motion to enforce the North Dakota Order is DENIED. A hearing is required before the Court may rule on UMB's motion for a prejudgment writ of

1 attachment, *see* Wash. Rev. Code (“RCW”) 6.25.070, and the Court accordingly ORDERS a
2 hearing as set forth below.

3 Under Federal Rule of Civil Procedure 64, every remedy that is available under
4 Washington state law for the seizure of property to secure satisfaction of a potential judgment is
5 available in this Court. Procedurally, plaintiff must apply for the writ, making the preliminary
6 showing required by RCW 6.25.060(1), and the responding party must be given notice and an
7 opportunity to be heard, RCW 6.25.070. Substantively, the applicant must establish the probable
8 validity of its claims and that there is probable cause to believe that the alleged grounds for
9 attachment exist. RCW 6.25.070.

10 The Court finds that the Declaration of John D. Elrod, Dkt. No. 17, suffices to make the
11 preliminary showing required under RCW 6.25.060(1). In his declaration, Mr. Elrod avers that
12 “[t]he proposed attachment is not sought, and this action, is not prosecuted to hinder, delay, or
13 defraud any creditor of [Counterclaim Defendants]” and that he has “reason to believe and do[es]
14 believe that the Defendants are indebted to the Trustee for claims stemming from fraudulent
15 transfers received from Eagle Crest Apartments, LLC[.]” Dkt. No. 17 at 2 (specifying that
16 Counterclaim Defendant Sessions is indebted to UMB in the amount of \$1,722,968.63; Historic
17 Flight Foundation in the amount of \$1,026,043.00; and FWF in the amount of \$715,908.01). Dkt.
18 No. 17 at 2. Mr. Elrod also states that “[s]everal of the grounds stated in RCW 6.25.030 for the
19 issuance of a writ of attachment exist” due to Counterclaim Defendants’ (1) orchestration of a
20 series of fraudulent transfers and their assigning, secreting, or disposing of their property or their
21 imminent plans to do so with intent to delay or defraud UMB and (2) incurring the indebtedness
22 to UMB under false pretenses. *Id.* at 2–3.

23 Under RCW 6.25.070, Counterclaim Defendants are entitled to notice and an opportunity
24 to be heard. At an attachment hearing, a defendant is entitled to present oral testimony and to

1 cross-examine witnesses in support of any affirmative defenses. *See Rogoski v. Hammond*, 513
2 P.2d 285, 290 (Wash. Ct. App. 1973) (“The debtor, as pointed out, has a right to produce
3 evidence and arguments thereon, including the right to confront and cross-examine witnesses
4 when those are used.”).

5 An evidentiary hearing on this matter is hereby scheduled for Wednesday, March 16,
6 2022 at 9:00 a.m. The hearing will be conducted via Zoom videoconference. The Clerk will send
7 a Zoom invitation to all counsel of record. UMB will have the burden of establishing the
8 probable validity of its claims. The parties should also be prepared to address an appropriate
9 bond amount that would ensure that UMB prosecutes this matter without delay and that will
10 reimburse Counterclaim Defendants for any costs incurred in this action or damages sustained by
11 reason of a writ of attachment if the same is wrongfully entered. RCW 6.25.080.

12 By March 11, the parties shall file a list of witnesses they intend to call at the hearing and
13 a brief description of the expected testimony of each witness. UMB shall issue notice of the
14 hearing to Counterclaim Defendants in accordance with RCW 6.25.070(4).

15 Dated this 3rd day of March, 2022.

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Lauren King
18 United States District Judge
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